

EXHIBIT D



THE NEW YORK RACING ASSOCIATION, INC.

IN THE MATTER

OF

ROBERT A BAFFERT

STATEMENT OF CHARGES

FACTUAL ALLEGATIONS

1. Respondent Robert A. Baffert ("Respondent") is a trainer of Thoroughbred horses.
2. Respondent had four horses test positive for drug-related violations in the 12 months preceding the running of the 2021 Kentucky Derby.
3. Specifically, on or about July 14, 2020, the Arkansas Racing Commission ("ARC") imposed a \$5,000.00 fine on Respondent after a horse he trained tested positive for 3-hydroxylidocaine following a race at Oaklawn Park on May 2, 2020.
4. On or about July 14, 2020, the ARC imposed a second \$5,000.00 fine on Respondent when another horse he trained tested positive for 3-hydroxylidocaine, also at Oaklawn Park on May 2, 2020.
5. On or about November 29, 2020, the California Horse Racing Board imposed a \$2,500.00 fine on Respondent when a horse trained by him tested positive for dextromethorphan after running at Del Mar Racetrack on July 25, 2020.
6. On or about January 30, 2021, the Kentucky Horse Racing Commission ("KHRC") imposed a \$1,500.00 fine on Respondent when a horse he trained GAMINE, tested



positive for the presence of 27 picograms/mL of betamethasone, after finishing third in the Longines Kentucky Oaks race at Churchill Downs on September 4, 2020. The KHRC disqualified Respondent's horse and the purse money of \$120,000 was forfeited.

The 2021 Kentucky Derby

7. Respondent entered a three-year-old horse trained by him named Medina Spirit in the 2021 Kentucky Derby, which was held on May 1, 2021 at Churchill Downs Race Track in Louisville, Kentucky.

8. Medina Spirit finished first in the race and was declared the winner of the Kentucky Derby.¹

9. Immediately following the race, however, testing from post-race blood samples revealed that Medina Spirit tested positive for betamethasone, a steroid anti-inflammatory drug.

10. Although betamethasone is a permitted medication for horses in Kentucky, at least a 14-day withdrawal time is mandated before a race. *See 810 KAR § 8:025 Section 3(k).*

11. Any level of detection of betamethasone on race day is a violation under the KHRC equine medication protocols. *See 810 KAR § 8:010 Section 2(2).*

12. The "trainer responsibility rule" in Kentucky states: "In the absence of substantial evidence to the contrary, a licensed trainer shall bear primary responsibility for the proper care, health, training condition, safety, and protection against the administration of prohibited drugs or medication of horses in his or her charge." *See 810 KAR § 4:100 Section 3(1).*

¹ A video of the race can be accessed at the following link: <https://www.youtube.com/watch?v=oNNlSdkjuqA>.



13. Medina Spirit's post-race drug test following the Kentucky Derby found 21 picograms/mL of betamethasone.

14. KHRC is the state agency in Kentucky charged with regulating the conduct of horse racing and pari-mutuel wagering on horse racing and related activities.

15. On or about May 8, 2021, KHRC advised Respondent that Medina Spirit had tested positive for 21 picograms/mL of betamethasone and that an investigation would be conducted.²

16. KHRC is empowered to impose sanctions on Respondent and disqualify Medina Spirit as the winner of the Kentucky Derby, depending on the findings and outcome of the investigation.

Respondent Denies Medina Spirit Was Given Betamethasone

17. On or about May 9, 2021, Respondent held a press conference, in which he disclosed to the public that Medina Spirit had tested positive for betamethasone and that KHRC was conducting an investigation.³

18. During the press conference, Respondent repeatedly denied that Medina Spirit was ever given or treated with betamethasone.

19. Additionally, Respondent stated: "I'm not a conspiracy theorist, I know everybody is not out to get me, but there is definitely something wrong. Why is it happening, you know, to me, you know? There's problems in racing but it is not Bob Baffert." *Id.*

² WKYT, *Baffert says ointment used for Medina Spirit's skin condition contained betamethasone* (May 11, 2021), <https://www.wkyt.com/2021/05/11/baffert-says-ointment-used-for-medina-spirits-skin-condition-contained-betamethasone/>.

³ A video of the press conference can be accessed at the following link: <https://www.youtube.com/watch?v=IFlleIm0oGTg>.



20. In a similar vein, Respondent observed:

- a. "It's just, it's shocking. I still, you know. And so, this shouldn't have happened. So, I don't know what, there's a problem somewhere. It didn't come from us. Something happened there. We don't know what it is." *Id.*
- b. "I just say, it just seems odd. That why am I the only one that has, uh, you know, the contaminations? Why am I the only one?" *Id.*

Churchill Downs Suspends Respondent

21. On or about May 10, 2021, Churchill Downs Racetrack suspended Respondent from entering horses and explained its decision in a press release that stated as follows:

It is our understanding that Kentucky Derby winner Medina Spirit's post-race blood sample indicated a violation of the Commonwealth of Kentucky's equine medication protocols. The connections of Medina Spirit have the right to request a test of a split sample and we understand they intend to do so. To be clear, if the findings are upheld, Medina Spirit's results in the Kentucky Derby will be invalidated and Mandaloun will be declared the winner.

Failure to comply with the rules and medication protocols jeopardizes the safety of the horses and jockeys, the integrity of our sport and the reputation of the Kentucky Derby and all who participate. Churchill Downs will not tolerate it. Given the seriousness of the alleged offense, Churchill Downs will immediately suspend Bob Baffert, the trainer of Medina Spirit, from entering any horses at Churchill Downs Racetrack. We will await the conclusion of the Kentucky Horse Racing Commissions' investigation before taking further steps.⁴

Respondent Continues to Deny Medina Spirit Was Given Betamethasone

22. On or about May 10, 2021, Respondent gave multiple interviews to the media in which he continued to deny that Medina Spirit was given betamethasone and alleged Churchill Downs' suspension was attributable to "cancel culture."

⁴ Churchill Downs Incorporated, *Churchill Downs' Statement in Response to Medina Spirit's Post-Race Test Result Allegations* (May 9, 2021), <https://www.churchilldownsincorporated.com/resources/kentucky-derby-and-oaks/churchill-downs-statement-in-response-to-medina-spirits-post-race-test-result-allegations/>.



23. For example, on The Dan Patrick Show, Respondent stated that Medina Spirit "has never been treated with that specific drug. So, we're, we're at a loss for words trying to figure out how he got contaminated, because at those levels they call it contamination."⁵

24. With respect to Churchill Down's suspension, Respondent stated: "I think it was just a knee jerk cancel culture kind of reaction." *Id.*

25. In addition, Respondent stated:

I never been a conspiracy theorist. But I'm starting to suspect that, it's been happening to me on, on the big day. You know. And so. And we have really, have the security, we're watching them. I mean these horses live, they don't live in a bubble people, you know, their environment, their stalls, its open, you know, it's, people can walk through, you know, any time. We don't really. You know, we're not thinking. But it just, it just seems really, strange now that here's a horse that didn't get that specific drug. He was not treated with that. And it's uhm, it, you know, it, it's, that's what, that's mind-boggling right there that somebody either had to contaminate him somewhere. So, I, we just don't know that. I, I hate to speculate. But I, we don't know. *Id.*

26. On ESPN's SportsCenter, Respondent stated that Medina Spirit "was never administered" betamethasone.⁶

27. On Fox News,⁷ Respondent stated:

- a. "That horse has never been treated with [betamethasone.]" *Id.*
- b. "It did not happen, and that that's the really seriously troubling part of it. And we're, uhm, you know, I'm hiring investigators but

⁵ A video of this interview can be accessed at the following link:
<https://www.youtube.com/watch?v=Akhz1CUy-HY>.

⁶ A video of this interview can be accessed at the following link:
<https://www.youtube.com/watch?v=h4UKmQdJ8n4>.

⁷ A video of this interview can be accessed at the following link:
<https://www.youtube.com/watch?v=HACuhd7pMYQ>.



sometimes you never find out. And, it's just, it's a, it's just a tragedy what's happening in this race." *Id.*

- c. "Bob Baffert is not stupid. That's not a drug that I would, I would use on a horse. We don't use that horse, we don't use that drug. The horse never had it in him, and we have the documentation. We're going to show everything." *Id.*
- d. "Churchill Downs came out with that statement, that was pretty harsh. And I think they had to just, you know, it, it's, with all the noise going out, out, you know, we live in a different world now. This, this America is different and this, and it was like a cancel culture kind of a, a thing so they're reviewing it." *Id.*

Respondent Admits Medina Spirit Was Given Betamethasone

28. The next day, on or about May 11, 2021, Respondent stated that Medina Spirit was in fact treated with an ointment containing betamethasone that was applied daily until the day before the Kentucky Derby.

29. In a written statement issued to the media, Respondent stated:

On May 8, 2021, I was informed by the Kentucky Horse Racing Commission that Medina Spirit allegedly tested positive for 21 picograms of betamethasone. On May 9, 2021, I held a press conference in which I stated that I intended to thoroughly investigate how this could have happened and that I would be completely transparent throughout the process. I immediately began that investigation, which has resulted in me learning of a possible source for the betamethasone, and now, as promised, I want to be forthright about what I have learned.

Following the Santa Anita Derby, Medina Spirit developed dermatitis on his hind end. I had him checked out by my veterinarian who recommended the use of an anti-fungal ointment called Otomax. The veterinary recommendation was to apply this ointment daily to give the horse relief, help heal the dermatitis, and prevent it from spreading. My barn followed this recommendation and Medina Spirit was treated with Otomax once a day up until the day before the Kentucky Derby. Yesterday, I was informed that one of the substances in Otomax is betamethasone. While we do not know definitively that this was the source of the alleged 21 picograms found in Medina Spirit's post-race blood sample, and our investigation is continuing, I have been told by equine pharmacology experts that this could explain the test results. As such, I wanted to be forthright about this fact as soon as I learned of this information.



As I have stated, my investigation is continuing and we do not know for sure if this ointment was the cause of the test results, or if the test results are even accurate, as they have yet to be confirmed by the split sample. However, again, I have been told that a finding of a small amount, such as 21 picograms, could be consistent with application of this type of ointment. I intend to continue to investigate and I will continue to be transparent. In the meantime, I want to reiterate two points I made when this matter initially came to light. First, I had no knowledge of how betamethasone could have possibly found its way into Medina Spirit (until now) and this has never been a case of attempting to game the system or get an unfair advantage. Second, horse racing must address its regulatory problem when it comes to substances which can innocuously find their way into a horse's system at the picogram (which is a trillionth of a gram) level. Medina Spirit earned his Kentucky Derby win and my pharmacologists have told me that 21 picograms of betamethasone would have had no effect on the outcome of the race. Medina Spirit is a deserved champion and I will continue to fight for him.⁸

Churchill Downs Suspends Respondent for Two Years

30. On or about June 2, 2021, Clark O. Brewster, an attorney for Medina Spirit's owner, confirmed to the media that a second, independent lab confirmed the positive test of the Kentucky Derby winner's blood for betamethasone at a prohibited level. *See Joe Drape, Positive Drug Test Confirmed for Kentucky Derby Winner Medina Spirit, N.Y. TIMES (June 2, 2021),* <https://www.nytimes.com/2021/06/02/sports/horse-racing/kentucky-derby-medina-spirit-baffert.html>.

31. On or about June 2, 2021, Churchill Downs Incorporated ("CDI"), the parent company of Churchill Downs, announced the suspension of Respondent for two years effective immediately through the conclusion of the 2023 Spring Meet at Churchill Downs Racetrack.⁹

⁸ WKYT, *Baffert says ointment used for Medina Spirit's skin condition contained betamethasone* (May 11, 2021), <https://www.wkyt.com/2021/05/11/baffert-says-ointment-used-for-medina-spirits-skin-condition-contained-betamethasone/>.

⁹ Press Release, Churchill Downs Incorporated, Churchill Downs Incorporated Suspends Bob Baffert for Two Years (June 2, 2021),



32. That suspension prohibits Respondent, or any trainer directly or indirectly employed by Bob Baffert Racing Stables, from entering horses in races or applying for stall occupancy at all CDI-owned racetracks.

33. CDI's chief executive officer, William C. Carstanjen, explained CDI's decision as follows in a public statement:

Reckless practices and substance violations that jeopardize the safety of our equine and human athletes or compromise the integrity of our sport are not acceptable and as a company we must take measures to demonstrate that they will not be tolerated. Mr. Baffert's record of testing failures threatens public confidence in Thoroughbred racing and the reputation of the Kentucky Derby. Given these repeated failures over the last year, including the increasingly extraordinary explanations, we firmly believe that asserting our rights to impose these measures is our duty and responsibility.¹⁰

NYRA May Exclude or Deny a Trainer Access to its Facilities and Privileged Thereon

34. In accordance with the Franchise Agreement entered into on September 12, 2008 by and among The New York Racing Association ("NYRA") and The New York State Franchise Oversight Board, NYRA has the right and responsibility to manage and operate all functions at the racing facilities known as Belmont Park, Saratoga Race Course and Aqueduct Racetrack.

https://www.kentuckyderby.com/uploads/wysiwyg/assets/uploads/20210602_Baffert_Suspension.pdf.

¹⁰ Steven Taranto, *Churchill Downs suspends trainer Bob Baffert for two years following Medina Spirit's drug test results*, CBS SPORTS (June 2, 2021), <https://www.cbssports.com/general/news/churchill-downs-suspends-trainer-bob-baffert-for-two-years-following-medina-spirits-drug-test-reults/>.



35. NYRA has a legal right to ban from its Racetracks individuals whose presence it finds detrimental to the best interests of racing. In fact, the rules and regulations of the New York State Gaming Commission ("the Commission") codify the common law right of a racetrack operator to exclude individuals, including individuals possessing Commission-issued licenses. Specifically, the Commission's regulation that addresses the power of a racetrack steward to exclude persons from the racetrack or suspend a license for up to 60 days, concludes with the following statement:

Nothing in this section shall be construed to limit any racing association or track licensee's power to exclude or deny any individual from its grounds or privileges thereon. (9 N.Y.C.R.R. § 4022.12).

36. The Commission's regulations also authorize NYRA to cancel or revoke entries of horses by any person without notice. See id. § 4025.2 ("The nominations or entries of any person, or the transfer of any nomination or entry, may be cancelled or revoked without notice by the racing association or in the discretion of the commission or of the stewards.").

37. NYRA has a lawful right to exclude or deny a licensed trainer of Thoroughbred horses from its facilities or privileges thereon, subject to the requirements of due process, in accordance with *Matter of Saumell v. N.Y. Racing Ass'n*, 58 N.Y.2d 231, 447 N.E.2d 706, 460 N.Y.S.2d 763, 765 (N.Y. 1983), *Jacobson v. New York Racing Ass'n*, 33 N.Y.2d 144, 305 N.E.2d 765, 350 N.Y.S.2d 639 (N.Y. 1973), and 9 N.Y.C.R.R. § 4022.12.



STATEMENT OF CHARGES

Charge I: Conduct Detrimental to the Best Interests of Racing

Respondent is charged with engaging in conduct detrimental to the best interests of Thoroughbred Racing. Respondent's conduct has harmed the reputation and integrity of the sport, as well as the public's perception of the sport's legitimacy. As a result of Respondent's conduct, NYRA seeks to exercise its reasonable discretionary business judgment to exclude Respondent from entering or stabling horses on the grounds it operates, or any portion of such grounds.

Charge II: Conduct Detrimental to the Health and Safety of Horses and Jockeys

Respondent is charged with engaging in conduct detrimental to the health and safety of horses and jockeys. Certain prohibited or otherwise regulated substances, such as betamethasone, have the potential to mask injuries when used in Thoroughbred racing when they exceed the threshold levels legally permitted for a horse at race time. A substance's ability to mask injuries allows a horse to compete in a race when it otherwise should not, which increases the risk of catastrophic injury to horses and jockeys. Accordingly, Respondent's use of betamethasone and other drugs above state mandated threshold limits put the health and safety of horses and jockeys at risk. As a result, NYRA seeks to exercise its reasonable discretionary business judgment to exclude Respondent from entering or stabling horses on the grounds it operates, or any portion of such grounds.

Charge III: Conduct Detrimental to NYRA Business Operations

Respondent's conduct has impeded NYRA's ability to effectively supervise the activities at the racetracks it operates so that its patrons have confidence that the sport is honestly conducted, protecting competitors from the participation in tainted horse races, and safeguarding the wagering



public. As a result of Respondent's conduct, NYRA seeks to exercise its reasonable discretionary business judgment to exclude Respondent from entering or stabling horses on the grounds it operates, or any portion of such grounds.

Date: September 9, 2021
Jamaica, New York

A handwritten signature in black ink that reads "Stuart Subotnick".

Stuart Subotnick
Racing Committee Chairman
The New York Racing Association, Inc.